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FILED
JUL 31 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1941.

No. 327

ISABELLE HAMMOND-KNOWLTON, as Administratrix *cum testamento annexo de bonis non* of the Estate of CHARLES C. KNOWLTON, deceased,

Petitioner,

against

THE UNITED STATES OF AMERICA, as substituted defendant for THE HARTFORD CONNECTICUT TRUST COMPANY OF HARTFORD CONNECTICUT, Executor u/w ROBERT O. EATON, deceased, former Collector of Internal Revenue,

Respondent.

Petition of Isabelle Hammond-Knowlton, Admx., Etc., Plaintiff-Appellee Below for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

RUDOLPH L. VON BERNUTH,
Counsel for Petitioner.



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Supreme Court of the United States

OCTOBER TERM, 1941.

No.

ISABELLE HAMMOND-KNOWLTON, as Administratrix *cum testamento annexo de bonis non* of the Estate of Charles C. Knowlton, deceased,

Petitioner,

against

THE UNITED STATES OF AMERICA, as substituted defendant for THE HARTFORD CONNECTICUT TRUST COMPANY OF HARTFORD CONNECTICUT, Executor u/w Robert O. Eaton, deceased, former Collector of Internal Revenue,

Respondent.

PETITION OF ISABELLE HAMMOND-KNOWLTON, ADMX. ETC., PLAINTIFF-APPELLEE BELOW FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Statement of the Matters Involved.

The petitioner prays for a writ of certiorari to review the determination of the Circuit Court of Appeals for

the Second Circuit, reversing the judgment of the District Court of the District of Connecticut entered on the 2nd day of October, 1940, for the sum of $10,000 in favor of petitioner and against the United States of America after a retrial of an action at law for money had and received commenced by the petitioner on March 1, 1933, by service of process on Robert O. Eaton, Collector of Internal Revenue for the District of Connecticut named as sole defendant therein.

The proceedings leading up to the institution of said suit and taken thereafter to the present are as follows:

On or about December 29, 1931, petitioner filed with the Commissioner of Internal Revenue a verified statement asking that the audit and review of the estate tax return for determination of the estate tax liability of the estate of said Charles C. Knowlton under the 1924 Revenue Act be continued in order that the Commissioner might pass on the proof therewith submitted of the actual and complete payment of Connecticut State inheritance taxes, so as to entitle her to a credit against said tax liability to the extent of 25% thereof, as provided by Section 301 (b) of said Revenue Act, and requested a refund thereof for the reason that said estate tax had been theretofore determined by the Commissioner in the amount of $59,155.51 and paid in full to the said Collector of Internal Revenue, and a sum largely in excess of $14,788.88 (25% of $59,155.51) had thereafter been paid to the State of Connecticut on account of State inheritance tax.

Under date of July 6, 1932, the Commissioner rejected petitioner's claim for refund—not for insufficiency of proof but on limitational grounds, viz:—that the payment of the Federal tax having been made in 1925, her claim was barred by Section 3228 of the Revised Statutes.

Thereupon suit was instituted.

The cause was tried before Hon. Carroll C. Hincks, D. J., who rendered his decision in favor of plaintiff, judgment being entered April 30, 1936, for $14,788.88, the amount of the statutory credit.

An appeal was taken by the defendant-executor to the Circuit Court of Appeals and the judgment was reversed on the ground that the action was not maintainable against the Collector, but a new trial was ordered to allow the plaintiff to prove the limitational effect of the Commissioner's regulations governing the submission of proof in connection with the allowance of the mandatory statutory credit. The order for new trial was entered on April 30, 1937. A petition on behalf of plaintiff for rehearing of said appeal was denied on May 3, 1937.

On or about July 1st, 1937, plaintiff filed with this Court her petition for a writ of *certiorari* to the Circuit Court of Appeals for the Second Circuit, together with transcript of record from which it appeared that a new trial had been ordered. Said petition was denied on October 11th, 1937 (302 U. S. 707).

Thereafter, on June 2, 1938, an order was entered substituting *nunc pro tunc* the United States of America as defendant in the place and stead of said deceased Collector's legal representative. The complaint was amended to reflect said substitution and the *ad damnum* reduced to $10,000.

The cause was retried on February 2, 1940, before Hon. Carroll C. Hincks, D. J., who again rendered his decision in favor of plaintiff, ruling that the claim for credit and refund as aforesaid, received by the Commissioner on December 29, 1931, was a timely compliance with said Section 3228, Revised Statutes, and directed judgment for this petitioner in the sum of $10,000 and interest from October 2, 1940, the date of the entry of said judgment.

An appeal was taken by the defendant herein to the Circuit Court of Appeals and on May 22, 1941, duly came on for argument before their Honors, Swan, Chase and Frank, Circuit Judges. Subsequently, and on the 24th day of June, 1941, an opinion was handed down, per Frank, C. J., reversing said judgment.

On July 8, 1941, a petition on behalf of said appellee was filed by her counsel asking for a rehearing of said appeal. Said petition was denied on July 21st, 1941. The order for mandate was entered July 21st, 1941.

The Circuit Court of Appeals, affirming the correctness of their decision on the prior appeal, *i. e.,* that the action was not maintainable against the Collector, has reversed the current judgment on the ground that the amendment of the complaint by the substitution of the United States as defendant and the reduction of the *ad damnum* to comply with the jurisdictional limits of the Tucker Act, 24 Stat. 505, constituted the bringing of a new action which was barred by the Statute of Limitations.

It is for review and correction of both holdings that this petition is presented.

Reasons for Allowance of Writ.

It is submitted that the determination of the Circuit Court of Appeals in effect holding that a suit, in which the Collector of Internal Revenue is named as sole defendant, for the recovery from the United States of an overpayment of estate tax made to that officer, is based on his personal liability and that the amendment of the complaint by the substitution of the United States of America as defendant, under the circumstances as disclosed by the record herein constituted the bringing of a new action, is erroneous and that the errors are such as to invoke a corrective exercise of the discretion of

this Court upon one or more of the grounds suggested in Rule 38, paragraph 5, subdivision "B", viz:

(1) That the Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter;

(2) has decided an important question of Federal law which has not been, but should be, settled by this Court, and

(3) has decided an important Federal question in a way probably in conflict with applicable decisions of this Court.

It is also submitted that the prior determination of said Appellate Court on the former reversal, holding that the action was not maintainable against the Collector, was erroneous in that it failed to adhere to the principle enunciated by this Honorable Court in cases which will be cited in the accompanying brief, viz: That a suit against a Collector of Internal Revenue is remedial only; is not based on an assertion of right (cause of action) against such officer to enforce a demand to which he must respond, but is afforded to the taxpayer by R. S. Section 3220 in order to recover from the United States moneys paid to the Collector for account of the United States Treasury.

On account of present day procedures in the liquidation of tax liability, the case at bar is one of novel impression and the legal conclusions deducible from the record require consideration and determination by the Court of last resort.

Furthermore, Judge Frank, in his carefully considered opinion, has said:

> "We, therefore, conclude reluctantly, that, if appellant (~~sic~~) is to be successful, it must be by direction of the Supreme Court and not by ours. Because the matter is of general importance and

not entirely free of doubt we feel it appropriate to set forth in some detail the bases of our conclusion."

Therefore, an exposition by this Court of the true function of a taxpayer's suit in which the Collector is sued as the nominal defendant only, is essential to the proper dispensation of justice in the case of your petitioner and other taxpayers who may be similarly situated.

Prayer for Relief.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Second Circuit commanding that Court to certify and send to this Court for its review and determination a full and complete transcript of the record and all proceedings had herein in the said Court, and that the said determination of the United States Circuit Court of Appeals for the Second Circuit be reversed in respect of its determination that the action in which the Collector was originally named as sole defendant was barred by the Statute of Limitations, because the substitution of the United States and the reduction of the *ad damnum* constituted the bringing of a new suit; to the end that the judgment rendered by the District Court in favor of petitioner be affirmed in the principal sum of $10,000 and that your petitioner may have such other and further relief in the premises as to this Court may seem just and proper, and your petitioner will ever pray.

Dated, July 29, 1941.

ISABELLE HAMMOND-KNOWLTON,
Petitioner.

RUDOLPH L. VON BERNUTH,
Counsel for Petitioner.